(2)

Supreme Court, U.S.
FILED
JUN 6 2003
OFFICE OF THE CLERK

No. 02-1635

IN THE

Supreme Court of the United States

RMS TECHNOLOGY, INC.,
Petitioner,

v.

TELEDYNE INDUSTRIES, INC.,
TELEDYNE TECHNOLOGIES INC.
AND
TELEDYNE BROWN ENGINEERING, INC.,
Respondents.

On Petition For A Writ Of Certiorari To The U.S. Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

DANIEL G. JARCHO
Counsel of Record
RAYMOND B. BIAGINI
MICHAEL A. HOPKINS

MCKENNA LONG &
ALDRIDGE LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 496-7500

Counsel for Respondents

10 pp

RULE 29.6 DISCLOSURE

Allegheny Technologies, Inc. ("ATI") is the parent corporation of Respondent Teledyne Industries, Inc. No publicly held company owns 10 percent or more of ATI's stock.

Respondent Teledyne Technologies, Inc. is the parent corporation of Respondent Teledyne Brown Engineering, Inc. No publicly held company owns 10 percent or more of the stock of Teledyne Technologies, Inc.

TABLE OF CONTENTS

Page

STATEMENT OF THE CASE 1

A. The Contract 1

B. The Dispute 2

C. The Litigation 2

REASONS FOR DENYING THE PETITION 3

CONCLUSION 5

TABLE OF AUTHORITIES

CASES **Page**

Bishop v. Wood, 426 U.S. 341 (1976) 4

Graver Mfg. Co. v. Linde, 336 U.S. 271 (1949) 5

Huddleston v. Dwyer, 322 U.S. 232 (1944) 5

STATEMENT OF THE CASE

This case arises from a garden variety contract dispute that raises no issues worthy of this Court's consideration. Section I of the per curiam opinion by the Court of Appeals for the Fourth Circuit concisely stated the facts that are material to the consideration of the questions presented. (*See* Pet. App. 2-5.) We briefly summarize those facts here.

A. The Contract

On May 2, 1995, Lockheed Martin contracted with the Respondent ("Teledyne") to fabricate, test, and deliver armor moving target carrier ("AMTC") systems. (Pet. App. 2-3.) The AMTC systems were part of a Remote Target System ("RETS") requested by the U.S. government to provide realistic combat training for the armed services. (*Id.*) On July 7, 1995, Teledyne subcontracted with Petitioner ("RMS") to manufacture three first article and thirty-seven subsequent AMTC systems for delivery between December 30, 1995 and July 30, 1996. (Pet. App. 3.) The language of the subcontract between Teledyne and RMS contained a number of indicia signaling that the contract was for the sale of goods. (Pet. App. 6.)

During the negotiations leading up to the subcontract, RMS informed Teledyne that it was currently producing AMTC systems for the U.S. government, and that any remaining first article tests might be waived because of RMS' experience in manufacturing these systems. (Pet. App. 3.) RMS quoted prices that varied based on what portion of the materials for the project would be supplied by Teledyne. (*Id.*) Ultimately, the parties agreed that Teledyne would supply most of the raw materials for the first two years of production, and that RMS would supply primer, paint, cleaning chemicals, consumables, and hydraulic fluid. (*Id.*)

B. The Dispute

On February 22, 1996, RMS advised Teledyne that it was "compelled to stop work" on the subcontract "due to lack of funds." (Pet. App. 4.) RMS also informed Teledyne that it had laid off all of its employees. (*Id.*) On February 29, 1996, Teledyne sent a letter to RMS alleging default and terminating the contract. (*Id.*) On April 26, 1996, RMS submitted a claim to Teledyne for $176,435.56 for alleged out of scope work done in connection with the subcontract. (*Id.*) Teledyne responded by letter, informing RMS that it would submit all valid and substantiated claims to Lockheed Martin as part of a settlement proposal. (*Id.*) In November 1996, Teledyne sent its settlement proposal to Lockheed Martin, which included only the amounts that Teledyne actually paid to RMS. (*Id.*) Teledyne informed Lockheed Martin that RMS had claimed additional costs, but that such costs were not included in the proposal because they were not yet substantiated. (*Id.*) On December 20, 1996, Teledyne entered into a settlement agreement with Lockheed Martin, which did not include any sums for the allegedly out of scope work. (*Id.*)

C. The Litigation

On February 23, 2001, RMS filed a five-count complaint against Teledyne in the United States District Court for the Eastern District of Virginia for $282,788.78, plus pre-judgment interest and costs. (Pet. App. 4.) RMS alleged: (1) breach of contract; (2) quantum meruit; (3) impossibility and commercial impracticability; (4) unjust enrichment; and (5) constructive trust. (Pet. App. 4-5.) On April 26, 2001, Teledyne filed a motion for summary judgment arguing that each count had been filed outside the applicable statute of limitations period. (Pet. App. 5.) Specifically, Teledyne asserted that two of the counts (breach and impossibility)

were barred by the four-year limitations period under Virginia's version of the Uniform Commercial Code because the written contract was for a sale of goods. (*Id.*) Teledyne also asserted that the three remaining counts (quantum meruit, unjust enrichment, and constructive trust) were barred under Virginia's three-year limitations period for unwritten contracts because those counts were based on alleged implied-in-law contracts. (*Id.*)

On October 22, 2001, the district court granted Teledyne's motion for summary judgment. (Pet. App. 5.) Subsequently, the district court denied RMS' motion for reconsideration. (Pet. App. 22.) RMS appealed the ruling to the U.S. Court of Appeals for the Fourth Circuit. On February 6, 2003, the Fourth Circuit affirmed by an unpublished per curiam opinion. (Pet. App. 1.)

REASONS FOR DENYING THE PETITION

This case is not worthy of review by the Court because it involves the straightforward application of Virginia's statutes of limitations in a routine contract dispute. Indeed, Petitioner does not state any compelling reasons why its Petition should be granted. Rather, Petitioner is merely asking the Court to correct what it perceives to be erroneous factual findings and the misapplication of Virginia law by two federal courts sitting in that State. Supreme Court Rule 10, however, plainly specifies that a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." The two questions presented by the Petitioner fall squarely in those categories. The Court also rarely grants review in cases that only raise state law issues. Accordingly, the Court should deny the Petition.

The first question presented for review asks "[w]hether the Fourth Circuit erred by concluding that there is no

genuine issue of fact in dispute as to whether the Contract was for the sale of goods or for services." The Petitioner summarizes its argument in favor of review as follows:

> In short, at best, the facts bearing upon the question whether the Contract was predominately for goods or services are conflicting, genuinely in dispute, and a proper jury question. The District Court Judge weighed the evidence and determined that the Contract was principally for goods, rather than determining that there were genuine issues for trial. As such, the District Court's grant and the Fourth Circuit's affirmation of Summary Judgment are contrary to Rule 56 of the Federal Rules of Civil Procedure and are reversible.

(Pet. at 14.)

The Court has often held that "a court of law, such as this Court is, rather than a court of correction of errors in fact finding, cannot undertake to review the concurrent findings of fact by two courts below in the absence of a very obvious and exceptional show of error." *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). In this case, the District Court and the Fourth Circuit "found that there were no genuine issues of fact in this case as to which statutes of limitations applied." (Pet. App. 5.) Petitioner has not pointed to any very obvious or exceptional errors because there are none. The Court, therefore, should follow its well-established practice and deny the Petition.

The second question presented in the Petition asks "[w]hether the Fourth Circuit erred by concluding that the Contract was for the sale of goods to which the Uniform Commercial Code applied." Petitioner argues that the district court and the Fourth Circuit both reached erroneous conclusions based on what Petitioner now describes as the

"undisputed facts." (Pet. at 19.) The opinions of the two courts below, however, make clear that both courts properly applied the test required by governing precedent to conclude that the contract at issue was for the sale of goods. (*See* Pet. App. 6, 15-16.) Thus, the Petitioner's argument amounts to nothing more than an allegation that the district court and the Fourth Circuit misapplied a properly stated rule of state law. The Court has stated that "ordinarily we accept and therefore do not review, save in exceptional cases, the considered determination of questions of state law by the intermediate federal appellate courts." *Huddleston v. Dwyer*, 322 U.S. 232, 237 (1944). That is particularly true where, as here, the district court and the Court of Appeals concurred on the state law issue. *See Bishop v. Wood*, 426 U.S. 341, 346 (1976). Rule 10, moreover, advises that petitions alleging such errors are rarely granted. The circumstances presented here do not warrant an exception to the Court's well-established rules and practice.

CONCLUSION

The Court should deny the Petition for Writ of Certiorari. The Petitioner failed to commence legal action within the periods mandated by Virginia's statutes of limitations. In a desperate attempt to avoid the consequences of its inaction, Petitioner has tried to recast the contract, in retrospect, as one for the sale of services rather than goods. Two courts have heard and rejected Petitioner's arguments, and these arguments do not warrant a third review by the Supreme Court. The questions presented are tied exclusively to facts specific to this case and Virginia's statutes of limitations. The per curiam opinion of the Fourth Circuit was unpublished and, therefore, is not binding precedent under that court's local rules. In sum, this case has no importance whatsoever beyond the particular facts and parties involved.

Moreover, the decisions below were correct. Accordingly, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

DANIEL G. JARCHO
Counsel of Record
RAYMOND B. BIAGINI
MICHAEL A. HOPKINS

MCKENNA LONG &
ALDRIDGE LLP
1900 K Street, N.W.
Washington, D.C. 20006
(202) 496-7500

Counsel for Respondents

June 6, 2003